

The opinion in support of the decision being entered today was **not** written
for publication and is **not** binding precedent of the Board.

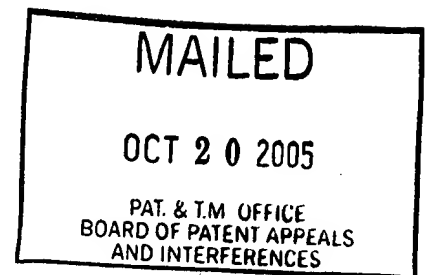
UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte Eric M. Foster
and Bryan J. Lloyd

Appeal No. 2005-2514
Application No. 09/534,901

ON BRIEF



Before KRASS, DIXON, and NAPPI, **Administrative Patent Judges.**
DIXON, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-14,
which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

Appellants' invention relates to a block-based negative filtering of MPEG-2 compliant table sections. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A method of filtering a datastream containing transport table sections, said method comprising steps of

determining presence of transport table sections in a payload portion of a packet of said datastream from a table identification (TID) field in a header of said packet,

filtering a portion of said transport table sections in accordance with a mask which defines a filter function and a logic state of a not match bit to provide a compare result,

selecting a next mask and a portion of said transport table sections in accordance with a filter ID, and

combining compare result values in accordance with a logic values of not match bits in a not match indication register,

whereby an arbitrary length of said transport table sections are filtered by an arbitrary number of filters having arbitrary filter functions.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Mao et al. (Mao)	6,459,427	Oct. 1, 2002 (Filed Apr. 1, 1998)
Komi et al. (Komi)	6,477,185	Nov. 5, 2002 (Filed Sep. 28, 1998)

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellants regarding the above-noted rejections, we make reference to the answer (mailed Jul. 14, 2004) for the examiner's reasoning in support of the rejections, and to the brief (filed Apr. 12, 2004) and reply brief (filed Sep. 14, 2004) for appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we make the determinations which follow.

35 U.S.C. § 103

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. **See In re Rijckaert**, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A *prima facie* case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. **See In re Lintner**, 458 F.2d

1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is *prima facie* obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. **See In re Fine**, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. **See In re Warner**, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), **cert. denied**, 389 U.S. 1057 (1968). Our reviewing court has repeatedly cautioned against employing hindsight by using the appellant's disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. **See, e.g., Grain Processing Corp. v. American Maize-Prods. Co.**, 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

When determining obviousness, "the [E]xaminer can satisfy the burden of showing obviousness of the combination `only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would

lead that individual to combine the relevant teachings of the references.” **In re Lee**, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), citing **In re Fritch**, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). “Broad conclusory statements regarding the teaching of multiple references, standing alone, are not ‘evidence.’” **In re Dembiczak**, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). “Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact.” **Dembiczak**, 175 F.3d at 999-1000, 50 USPQ2d at 1617, citing **McElmurry v. Arkansas Power & Light Co.**, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993).

Further, as pointed out by our reviewing court, we must first determine the scope of the claim. “[T]he name of the game is the claim.” **In re Hiniker Co.**, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Therefore, we look to the language of independent claim 1 as to recited limitations. Appellants argue that the examiner has not approached making a *prima facie* case of obviousness of any claim in the application. (Reply brief at page 4.) We agree with appellants, and do not find that the examiner has made the initial showing for establishing a *prima facie* case of obviousness.

We find that the examiner has not shown all of the limitations as recited in the claims are either present in the prior art or fairly suggested by the combined teachings

of Komi and Mao. While appellants argue in great detail the differences between the disclosed invention and the prior art applied in both the brief and the reply brief, we do not find most of the arguments commensurate in scope with the claimed invention. We do find convincing appellants' argument that the claimed "filtering a portion of said transport table sections in accordance with a mask which defines a filter function and a logic state of a not match bit to provide a compare result" is not taught or fairly suggested by either Komi or Mao. (Brief at page 13.) We agree with appellants and find that the examiner only generally cites to columns 7 and 8 of Mao to teach this limitation and to suggest the combination. (Answer at pages 5 and 9.) We do not find a requisite teaching or suggestion in Mao for the claimed invention or for the combination of the teachings and find that the examiner has only addressed a "filtration process" (Answer at page 9) rather than the specific limitations recited in the language of independent claim 1. Therefore, we find that the examiner has not initially established the requisite ***prima facie*** case of obviousness, and we cannot sustain the rejection of independent claim 1 and its dependent claims 2-7. Similarly, we make the same finding with respect to independent claim 8 and dependent claims 9-14 where the examiner has not clearly established a ***prima facie*** case of obviousness of the invention recited in independent claim 8.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-14 under
35 U.S.C. § 103 is REVERSED.

REVERSED



ERROL A. KRASS
Administrative Patent Judge



JOSEPH L. DIXON
Administrative Patent Judge



ROBERT E. NAPPI
Administrative Patent Judge

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